

EXHIBIT J

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

THE SCO GROUP,

Plaintiff,

vs.

No. 2:03CV0294DAK

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendants.

DEPOSITION OF THOMAS L. CRONAN, III
San Jose, California
Tuesday, December 14, 2004

Reported by:
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<p style="text-align: right;">Page 38</p> <p>1 modifications or derivatives of the software product?</p> <p>2 A In their -- in their entirety.</p> <p>3 Q Right. The entire modification or the entire</p> <p>4 derivative would be considered --</p> <p>5 A In combination with the UNIX code.</p> <p>6 Q Would be considered a resulting material?</p> <p>7 A That's correct.</p> <p>8 Q Okay. And those were required to be treated</p> <p>9 under the agreement as if they were part of the original</p> <p>10 license software product, correct?</p> <p>11 A That's correct. The -- the derivative work,</p> <p>12 which, as the term of art in copyright, means both the</p> <p>13 changed code and the original code in combination, which</p> <p>14 refers to both the code and the documentation, the</p> <p>15 original documentation with any changes to it. When</p> <p>16 you're done with that, that would be the resulting</p> <p>17 material.</p> <p>18 Q Okay. And was it your understanding that the</p> <p>19 term "derivative work" under 2.01 had the same meaning</p> <p>20 as what copyright law would have assigned to that term,</p> <p>21 "derivative work"?</p> <p>22 A I don't believe that was the discussion between</p> <p>23 the parties.</p> <p>24 Q Okay. Did you have an understanding in your</p> <p>25 own head as to that issue?</p>	<p style="text-align: right;">Page 40</p> <p>1 by IBM, any modified or changed code in one body, in one</p> <p>2 work.</p> <p>3 Q So if I understood you correctly, a derivative</p> <p>4 work would necessarily encompass a modification?</p> <p>5 A No. The other way around. I think a</p> <p>6 derivative work would necessarily include the System V</p> <p>7 code.</p> <p>8 Q Right. And how does the term "modification"</p> <p>9 compare to the work -- the term "derivative work"?</p> <p>10 A The right to create a modification allows you</p> <p>11 to make changes and write things that become part of the</p> <p>12 body of the code. Later, as we, you know, clarified</p> <p>13 this in a letter, we said that if those things were</p> <p>14 created and they were separate and didn't contain the</p> <p>15 System V code, that they could be used and owned by IBM</p> <p>16 and used separately from the derivative work.</p> <p>17 So that's why there's a difference because you</p> <p>18 have a right to go in there in your -- anything you do</p> <p>19 that changes the source code tree a programmer would</p> <p>20 consider a modification even if it didn't touch the</p> <p>21 original code. So you have people coming in and adding,</p> <p>22 you know, 200,000 lines of code to 100,000 lines of code</p> <p>23 and only maybe, you know, 20,000 lines touch each other,</p> <p>24 you could use that 200,000, 180,000 lines of code</p> <p>25 somewhere else and rewrite the interfaces to another</p>
<p style="text-align: right;">Page 39</p> <p>1 A You know, I don't know if I was sophisticated</p> <p>2 enough in 1985 to know the answer to that question.</p> <p>3 Q Okay. We've talked about the term "derivative</p> <p>4 work."</p> <p>5 What about the -- what about the issue of the</p> <p>6 right to -- the results of the right to modify that</p> <p>7 work? Is that something that's different, in your mind,</p> <p>8 than the creation of derivative works?</p> <p>9 A Let's see.</p> <p>10 Yes, they're separate rights.</p> <p>11 Q Okay. And would it be fair to say that we can</p> <p>12 call "modification" something that would result from the</p> <p>13 exercise of right to modify?</p> <p>14 A That's -- that's correct.</p> <p>15 Q Okay. And in your mind, is there a distinction</p> <p>16 between a modification on the one hand and a derivative</p> <p>17 work on the other?</p> <p>18 A Yes, there is.</p> <p>19 Q Okay. And what is that difference?</p> <p>20 A A derivative work would be the combination of</p> <p>21 any change code, any added code, any modifications which</p> <p>22 would be, you know, specifically original code that was</p> <p>23 changed. And in combination with the original code,</p> <p>24 that would be a derivative work. So it would include</p> <p>25 the UNIX System V code and any new code that was written</p>	<p style="text-align: right;">Page 41</p> <p>1 operating system.</p> <p>2 So whether someone might consider those to be</p> <p>3 modifications because they've been entered into and</p> <p>4 changed the System V code tree, but they were created</p> <p>5 differently -- so it becomes a -- something that needs</p> <p>6 to be clarified between something, whether it's a</p> <p>7 modification or original code, and that's why we had</p> <p>8 later clarifications about the fact that who created it</p> <p>9 became an important distinction between the parties.</p> <p>10 Because these terms -- you can imagine, you know,</p> <p>11 lawyers in 1985. Not a lot of people were that educated</p> <p>12 on copyright law. I became much more educated later on.</p> <p>13 Now, the -- the negotiations were primarily</p> <p>14 between business people who cared more about what the</p> <p>15 royalties were and what the -- the business terms were</p> <p>16 between the parties and who -- who we could distribute</p> <p>17 it to or not. There wasn't the level of sophistication</p> <p>18 that you're using in trying to interpret this, nor was</p> <p>19 it the level of sophistication that you might use today</p> <p>20 if you were entering into a license agreement because</p> <p>21 this was 1985.</p> <p>22 So the important thing between the parties was</p> <p>23 the stuff we have that's in System V today is ours.</p> <p>24 Anything you guys do, you could take and use separately</p> <p>25 as long as you don't use our code. I mean, that's the</p>

11 (Pages 38 to 41)